IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 19608 of 2004

And

WRIT PETITION NO.22840 OF 2004

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WRIT PETITION NO : 19608 of 2004

Between:

Irigi Peddaiah, s/o Venkaiah,
r/o Yacharam Village, Anumula Mandal,
Nalgonda District.

..... PETITIONER

AND

1 Nimmala Upender Reddy, s/o Venkata Gopal Reddy,
r/o Yacharam Village, Anumula Mandal,
Nalgonda District.
2 Junior Civil Judge, Miryalaguda-cum-Election Tribunal,

Miryalaguda, Nalgonda District.
3 The Collector, Nalgonda, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the impugned orders dt.14-10-2004 in OP No.16/2001 on the file of Junior Civil Judge, Miryalaguda-cum-Election Tribunal as arbitrary, illegal and violative of Article 14, 21 of Constitution of India consequently set aside the Impugned Orders dt.14-10-2004 in OP No.16/2001 on the file of Junior Civil Judge, Miryalaguda-cum-Election Tribunal.

Counsel for the Petitioner: MR.HARENDER PRASAD

Counsel for Respondent No.1: MR. Mahmood Ali

Counsel for Respondent No.3: GP FOR PANCHAYAT RAJ & RURAL DEV.

WRIT PETITION NO : 22840 of 2004

Between:

N.Upender Reddy, S/o.Venkata Gopal Reddy,
R/o.Yacharam village, Anumula Mandal,
Nalgonda Dist.

..... PETITIONER

AND

1 Irigi Peddulu, S/o.Venkaiah,
R/o.Yacharam village, Anumula Mandal,
Nalgonda Dist.
2 District Election Authority, District Collector, Nalgonda.
3 Election officer, Stage-1, Gram Panchayat, Yacharam,

Anumula Mandal, Nalgonda District, Moses Abraham, S/o. not

known to the petitioner,
Head Master, Zilla Parishad, High School, Haliya.
4 Election officer, Stage-2, Gram Panchayat, Yecharam, Mohd

GhulamMustafa, Head Master, Z.P.H.S.Alagadapa.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus appropriate writ or order declaring me as duly elected candidate for the office of Sarpanch of Yecharam Gram Panchayat, Anumula Mandal, Nalgonda District and pass such other order or orders.

Counsel for the Petitioner: MR.MAHMOOD ALI

Counsel for Respondent No.1: Harender Pershad

Counsel for Respondents 2 to 4: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court at the stage of admission made the following COMMON ORDER:

Since both these writ petitions arise out of a common order, they are being disposed of by a common order. For the sake of convenience, the parties would hereinafter be referred to as they are arrayed in the Tribunal.

(2) Petitioners in these writ petitions contested the election for the post of the Sarpanch of the Gram Panchayat of Yacharam village in which first respondent (who is the petitioner in W.P. No.19608 of 2004) was declared elected. Petitioner (who is the petitioner in W.P.No.22840 of 2004) filed the election petition questioning the election of first respondent on the ground that first respondent is disqualified under Section 19(3) of the A.P.Panchayat Raj Act (hereinafter referred to as 'the Act') from holding the post, as he is having three children i.e. Naresh Pratap (son aged twelve years), Priyanka (daughter aged seven years) and Benarjee (daughter aged four years nine months). He also sought for a declaration that he is elected as the Sarpanch of the village. First respondent filed counter in the petition alleging that the petitioner, in collusion with the Medical Officer, created some documents to show that he has a daughter aged four years nine months, when his daughter was, in fact,

born on 15-03-1995 i.e. prior to the coming into force of the Act and so he did not incur any disqualification under Section 19(3) of the Act.

(3) In support of his case, election petitioner examined himself as P.W.1 and another witness as P.W.2 and marked Exs.P1 to P3. On his behalf, first respondent examined himself as R.W.1 and two other witnesses as R.Ws.2 and 3 and marked Exs.R1 to R3. The Tribunal having held that since the third child of the first respondent was born on 01-12-1996 i.e., after the commencement of the Act, he is not qualified to contest the elections and, consequently set aside the election of the first respondent. Aggrieved thereby, first respondent filed W.P.No.19608 of 2004. Aggrieved by the Tribunal in not declaring him as duly elected, petitioner filed W.P.No.22840 of 2004.

(4) The points for consideration are:

i. If the first respondent is disqualified under Section 19(3) of the Act to contest the election.

ii. Whether petitioner is entitled to be declared elected as the Sarpanch.

POINT 1: (W.P.No.1960 OF 2004):

(5) First I would consider the documentary evidence on record. Ex.P1 sterilization certificate issued by the Medical Officer, PHC, Kanagal, shows that Irigi Kondamma, W/o Peddulu, R/o Yacharam who underwent tubectomy on 21-02-1997 at PHC, Kanagal, declared that she has two female and one male child and that her last child, a female is aged two months. Ex.P2 is the date of birth certificate of the daughter of the first respondent, issued by the Medical Officer, Kanagal. Ex.P3 is the receipt issued by the Election Officer to the petitioner. Ex.R1 dated 02-08-2001, issued by the Mandal Revenue Officer shows that he issued that certificate on the strength of the certificate given by the Head Master of the Central Primary School, Yacharam village, certifying that the date of birth of Kum.Irigi Jayasree, daughter of Peddulu is 15-03-1995. Ex.R2 is a certificate issued by the Head Master, Central Primary School, stating that the date of birth of Kum. Irigi Jayasree, daughter of Peddulu, as per records, is 15-03-1995. Ex.R3, the community, nativity and date of birth certificate issued by the Mandal Revenue Officer, Anumula shows that the date

of birth of Irigi Jayasree, daughter of Peddulu, is 15-03-1995.

(6) P.W.1 is the petitioner. The evidence of P.W.2, Civil Assistant Surgeon, shows that Exs.P1 and P2 contain the signatures of his predecessor Dr.S.Dasha Naik.

(7) First respondent as R.W.1, admitted during cross examination that except his wife, there is no other lady by name Irigi Kondamma, W/o Peddulu in the village, and that his wife underwent tubectomy operation at Primary Health Center, Kanagal on 21-02-1997. He also admitted that the Election Officer asked him to get the date of birth certificate of his second daughter, on the date of the scrutiny at 10.00 a.m., and one day prior to the date of scrutiny he obtained the date of birth certificate of his second daughter and handed over the same on the date of scrutiny. He stated that he obtained the certificate in anticipation of a question being asked about the date of birth of his second daughter and that he has shown the school date of birth certificate to the Mandal Revenue Officer, and based on that certificate, the Mandal Revenue Officer issued Ex.R1. In view of the above evidence of R.W.1, Ex.P1 is entitled to more weight than Ex.R1.

(8) R.W.2 is the neighbour of R.W.1 (first respondent). His evidence is that the wife of the first respondent, a native of Bollaram village, delivered first and second children at her house and the third child at Yacharam village and that the third child who is studying IV class is nine years old. During cross-examination, he stated that he cannot say the dates of birth of his three children aged 17 years, 12 years and 10 years and that he cannot say the date of birth of the third child of R.W.1, who was born in the house of R.W.1.

(9) R.W.3, a midwife stated that she attended only the wife of the first respondent at the time of her third delivery. During cross-examination, she admitted that since ten years women are going to hospital for delivery, and that she attended the wife of the first respondent ten years back approximately for one delivery.

(10) The evidence of R.Ws.2 and 3 looks artificial and so no reliance need be placed thereon.

(11) Since Ex.R1 certificate issued by the Mandal Revenue Officer is based on the date of birth mentioned in the school register, which would be mentioned by the parents as per their choice, and is not authentic, no reliance can be placed on Ex.R1. Since Ex.P1, certificate issued by the Doctor, who conducted tubectomy

operation, shows that the wife of the first respondent informed that the age of the third girl was two months, and since first respondent did not choose to examine his wife to swear to the facts stated by R.W.2 and R.W.3, the finding of the Tribunal that first respondent was disqualified under Section 19(3) of the Act to contest the election, needs no interference by this Court.

(12) Hence, W.P.No.19608 of 2004 is dismissed.

(13) **POINT 2: (W.P.No.22840 of 2004):**

As per Rule 4(ii) of the Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads Rules, 1995, the petitioner may, if he so desires, in addition to calling in question the election of the returned candidates, claim a declaration that he himself or other candidate has been duly elected.

(14) The fact that petitioner and the first respondent only contested the election is admitted. Since first respondent incurred disqualification from contesting the election, his nomination is invalid and so petitioner is entitled to be declared elected.

(15) In ***RUPADHAR PUJARI Vs GANGADHAR BHATRA,*** the Apex Court held that when only two candidates contested election and when one of the candidates elected is found to be disqualified, the other candidate is to be declared as elected, as an inevitable consequence. In view thereof, the order of the Tribunal needs to be modified and the petitioner is entitled to be declared elected.

(16) Accordingly, W.P.No.22840 of 2004 is allowed.

(17) Parties are directed to bear their costs in both these petitions.

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28-03-2005

kdl

To

1 The Junior Civil Judge, Miryalaguda-cum-Election Tribunal,

Miryalaguda, Nalgonda District.

2 The Collector, Nalgonda, Nalgonda District.

3 The District Election Authority, District Collector, Nalgonda.
3 The Election officer, Stage-1, Gram Panchayat, Yacharam,

Anumula Mandal, Nalgonda District, Moses Abraham, S/o. not

known to the petitioner, Head Master, Zilla Parishad, High

School, Haliya.
4 Election officer, Stage-2, Gram Panchayat, Yecharam, Mohd

GhulamMustafa, Head Master, Z.P.H.S.Alagadapa.

5 Two C.Cs. to the Government Pleader for Panchayat Raj and

Rural Development, High Court of A.P., Hyderabad, (OUT).

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